

Order 96-1-34



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 25th day of January, 1996

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Complaint of

FINE AIRLINES, INC.

against

THE GOVERNMENT OF THE REPUBLIC OF PERU

under 49 U.S.C. section 41310

Docket OST-95-691

ORDER

On September 27, 1995, Fine Airlines, Inc. (Fine), filed a complaint under 49 U.S.C. section 41310 (formerly section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974 (IATFPCA), as amended) against the Government of the Republic of Peru (Peru). Fine contends that Peru has prohibited it from conducting air transportation to, from, or over the territory of Peru, and that this action warrants remedial action under Section 41310 because it unreasonably and unjustifiably discriminates against a U.S. carrier and limits its access to a foreign market.¹

By Order 95-10-3, the Department invited all interested parties to file answers to Fine's complaint. Export Air del Peru, S.A., Empresa de Transporte Aereo del Peru, S.A. (Aeroperu), and Compania de Aviacion "Faucett" filed answers. Fine filed a reply together with a request for immediate action on its complaint. Subsequently, Peru filed comments through diplomatic channels which it stated could be made part of the public record in this case.² Fine filed a response to Peru's comments. The parties to this case have filed various additional pleadings over the past few months.³

By Orders 95-11-40 and 95-12-35, we extended the deadline for action on Fine's complaint to facilitate efforts toward a negotiated resolution of this matter.⁴

While not yet resolved, efforts are continuing through diplomatic channels to achieve a negotiated resolution of this matter. In these circumstances, we conclude that the public interest is best served by extending for another 30 days the deadline for action of Fine's complaint.

¹ Fine states that the ban on its operations was ostensibly based on a report that Fine had knowingly permitted a third-party charterer to use Fine aircraft to transport arms to Ecuador at a time when Ecuador and Peru were engaged in hostilities. Fine adds that from the outset it has "vehemently disputed the allegation and strenuously maintained its complete innocence of any wrongdoing." Complaint at 4.

² The Department afforded interested parties an opportunity to respond to Peru's comments. See Notice of Action Taken dated November 3, 1995.

³ See Orders 95-11-40 and 95-12-35 for a review of Fine's complaint and the pleadings filed.

⁴ On January 4, 1996, Fine filed a further response and stated, *inter alia*, that it is pleased that efforts have been undertaken through diplomatic channels to find a negotiated resolution because it prefers such an outcome to the retaliatory measures contemplated by the statute in cases like this. Fine accompanied its response with a motion for leave to file, which we will grant.

ACCORDINGLY,

1. We extend through February 24, 1996, the deadline for taking action on the complaint of Fine Airlines, Inc., in Docket OST-95-691;
2. We grant the motion of Fine Airlines, Inc., for leave to file; and
3. We will serve this order on American Airlines, Inc.; Challenge Air Cargo; Fine Airlines, Inc.; United Air Lines, Inc.; Export Air del Peru; Compania de Aviacion Faucett, S.A.; Aeroperu; the United States Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (South America), the Office of the United States Trade Representative; the United States Department of Commerce (Office of Service Industries); the Ambassador of Peru in Washington, D.C.; and the Air Transport Association.

By:

MARK L. GERCHICK
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*